

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket № 14046US02)

In the Application of:

Jeyhan Karaoguz, et al.

Serial No. 10/606,503

Filed: June 26, 2003

For: COMMUNICATION SYSTEM
AND METHOD FOR
DISCOVERING END-POINTS
THAT UTILIZE A LINK LAYER
CONNECTION IN A
WIRED/WIRELESS LOCAL
AREA NETWORK

Examiner: Blanche Wong
Group Art Unit: 2476
Confirmation No. 5221

***Electronically Filed on
January 28, 2010***

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a Notice of Appeal.

The review is requested for the reasons stated on the attached sheets.

Respectfully submitted,

Date: January 28, 2010

By: /Joseph M. Butscher/
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Attorney for Applicants

REMARKS

The present application includes pending claims 1-25, all of which have been rejected. As explained below, however, the Office Action fails to establish a *prima facie* case of anticipation with respect to any of the pending claims.

Claims 1-25 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 6,445,688 ("Garces"). The Applicants respectfully submit that Garces does not describe, teach or suggest "receiving a response from said at least one of a plurality of access points, said response reporting a presence of at least one access device located within a coverage area of said at least one of a plurality of access points, said at least one access device being separate and distinct from said at least one of a plurality of access points," as recited, for example, in claim 1.

Nevertheless, the Office Action states the following:

With regard to claims 1, 7, 13, 19, 23, Garces discloses ...
receiving a response (a sync response) from said at least one of a plurality of access points (WAP device L1 130), the response reporting a presence of at least one access device (indicating **WAP device 130** can send information) located within a coverage area (see Fig. 1) of said at least one of a plurality of access points (WAP device L1130 after receipt of a broadcast sync packet 212 from remote device K1 110 sends back a sync response 216 indicating WAP device 130 can send information to remote device K1110, col. 4, lines 33-38);

See November 17, 2009 Office Action at pages 4-5 (emphasis added).

As shown above, the Office Action relies on Garces at column 4, lines 33-38 as disclosing the relevant limitations noted above. Referring to FIGS. 1-2 of Garces, the Applicants point out that after the remote device K1 110 broadcasts a synch packet, the WAP device L1 130 (which the Office Action relies upon as "said at least one of a plurality of access points") sends back to the remote device K1 110 a synch response 216 (which the Office Action relies upon as a "response").

However, the synch response 216 of Garces only indicates to the remote device K1 110, that the WAP device L1 130 can send information to the remote device K1 110.

See Garces at column 4, lines 26-37. **Therefore, the synch response 216 does not report back to the remote device K1 110 a presence of at least one access device located within a coverage area of the WAP device L1 130, where such access device is separate and distinct from the WAP L1 130 (i.e., the access device is different from the WAP L1 130).**

For at least these reasons, the Applicants maintain that Garces does not describe, teach or suggest "receiving a response from said at least one of a plurality of access points, said response reporting a presence of at least one access device located within a coverage area of said at least one of a plurality of access points, said at least one access device being separate and distinct from said at least one of a plurality of access points," as recited in claim 1, for example.

Therefore, the Applicants respectfully submit that the Office Action has not established a *prima facie* case of anticipation with respect to claim 1 and the claims that depend therefrom. Independent claims 7, 13, 19, and 23 recite similar limitations. Therefore, the Applicants submit that independent claims 7, 13, 19, and 23 and the claims that depend therefrom are also not anticipated by Garces for at least the reasons stated above with regard to claim 1.

Nevertheless, a previous Office Action indicates the following:

With regard to claim 1, Applicant states that "Garces does not disclose or suggest at least the limitation of 'receiving a response from said at least one of a plurality of access points, said response reporting a presence of at least one access device located within a coverage area of said at least one of a plurality of access points'". Remark, p. 13, para. 2. Applicant also states that "the synch response 216 does not reporting back to the remote device K1 110 a presence of at least one access device located within a coverage area of the WAP device L1 130." Remark, p. 14, para. 1. **Examiner has shown at least one form of reporting back using the sync response and at least one presence of access device, namely WAP device.**¹

¹ Note, the Office Action conflates the **WAP device L1 130** as both an **access device** and **an access point**, thereby contradicting the language of the claims, which clearly and unequivocally recite access points and an access device as separate and distinct

See May 12, 2009 Office Action at page 2 (emphasis added).

As noted above, the Office Action equates “at least one of a plurality of access points,” as recited in claim 1, to **WAP device L1 130** of Garces. See November 17, 2009 Office Action at page 4. Further, the Office Action equates “response,” as recited in claim 1, to **sync response 216** of Garces. See *id.* Accordingly, **if one were to map the claim according to the faulty logic in the Office Action, the relevant claim limitations would incorrectly read as follows:**

receiving a [sync response 216] from [WAP device L1 130], said [sync response 216] reporting a presence of at least one access device located within a coverage area of said [WAP device L1 130], said at least one access device being separate and distinct from said [WAP device L1 130].

As noted, the Office Action conflates the WAP device L1 130 as both the access points **and** the access device (*see id.* at page 4), thereby exposing a clear error in the Office Action, as it relies on one component for two separate and distinctly claimed components.

Further, according to the claim reading adopted by the Office Action, in order for Garces to anticipate the claims, the “sync response” **must** report a presence of at least once access device (again, **not the same thing as an access point**) located within a coverage area of the WAP device L1 130. As explained above, however, **Garces simply does not describe, teach or suggest that the sync response reports a presence of at least one access device located within a coverage area of the WAP device L1 130.**

Simply put, the issue is whether the **sync response 216** of Garces (which the Office Action assumes is a “response”) contains information and is reporting a presence of **an access device** (which is not the same as an access point) that is located within the coverage area of the **WAP device L1 130** (which the Office Action assumes is “at least one of a plurality of access points”).

limitations. Accordingly, this exposes a clear error in the reasoning set forth in the Office Action. See *also* November 17, 2009 Office Action at pages 4-5

Whether or not the "Examiner has shown at least one form of reporting back using the sync response and at least one presence of access device, namely WAP device" (as stated above by the Examiner) is irrelevant, and, indeed, contradicts the language of the claims. That is, the Office Action seemingly conflates the WAP device L 1 130 as an access point **and** an access device, thereby contradicting the limitation in the claim that the access device **is separate and distinct from** the access point. Thus, for at least these reasons, the Office Action fails to establish a *prima facie* case of anticipation with respect to the claims.

Further, as explained previously, the synch response 216 of Garces only indicates to the remote device K1 110 that the WAP device L1 130 can send information to the remote device K1 110. See Garces at column 4 lines 26-37 ("WAP device L1 130 after receipt of a broadcast sync packet 212 from remote device K1 110 sends back a sync response 216 indicating WAP device L1 130 [which the Office Action assumes is an **access point**] can send information to remote device K1 110"). Garces does not describe, teach or suggest, however, that the sync response 216 reports a presence of **any access device** that is located within the coverage area of the WAP device L1 130, where such access device is separate and distinct from the WAP L1 130 (i.e., the access device is different from the WAP L1 130).

For at least these reasons, the Applicants respectfully request reconsideration of the claim rejections.

The Commissioner is authorized to charge any necessary fees, including the \$30 for the Notice of Appeal (**note, the Applicants previously paid \$510 for the Notice of Appeal on March 28, 2008**) or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Account No. 13-0017.

Respectfully submitted,

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Date: January 28, 2010

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